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BOARD OF INSTITUTIONS

HB 1001, 1978-1979

1978

## A SUNSET PERFORMANCE REVIEW



77-SS-11

Office of the Legislative Auditor



STATE OF MONTANA

Office of the Legislative Auditor

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HELENA, MONTANA 59601  
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October 10, 1978

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The Legislative Audit Committee  
of the Montana State Legislature:

Herein transmitted is our sunset performance audit of the Board of Institutions. The audit was conducted in response to the 1977 sunset law, which terminates the board on July 1, 1979. The intent of the audit was to determine the need for the Board of Institutions.

The audit focused upon the six questions of the sunset law and includes an examination of board operations. It does not encompass a review of the board's financial transactions or overall compliance with state laws.

There are no formal recommendations in the report since the responsibility for such recommendations lies with the Legislative Audit Committee. Nevertheless, we circulated drafts of the report to the director of the Department of Institutions, the members of the Board of Institutions, the Governor's Office of Budget and Program Planning, and the Office of Commerce and Small Business Development.

We wish to express our appreciation to the members of the board and to the director of the department and his staff for the assistance they provided during the audit.

Respectfully submitted,

*Morris L. Bruset*

Morris L. Bruset, C.P.A.  
Legislative Auditor

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Appointive and Administrative Officials

BOARD OF INSTITUTIONS

	<u>Term Expires</u>
Willis M. McKeon (Chairman) Malta, Montana	1981
Zella A. Jacobson Great Falls, Montana	1979
Eldon E. Kuhns Billings, Montana	1979
John W. Strizich Helena, Montana	1981
Dennis F. Dolan Butte, Montana	1981

DEPARTMENT OF INSTITUTIONS

Larry Zanto

Director



OFFICE OF THE LEGISLATIVE COUNCIL

GENERAL PERFORMANCE REVIEW

BOARD OF INSTITUTIONS

SUMMARY

Montana's 1977 Legislature passed Senate Bill 200, known as Chapter 562, Laws of Montana, 1977. The law, commonly referred to as the "sunset law," terminates numerous regulatory boards and agencies and specifically calls for a performance audit of each agency prior to scheduled termination. The sunset law terminates the Board of Institutions on July 1, 1979.

Chapter I (page 1) introduces the report by explaining the objectives and intent of sunset legislation, the six questions which relate to the need for state regulation, and the scope of our audit.

Chapter II (page 5) provides background information about the board. The chapter notes that executive reorganization in 1971 removed much of the board's authority and the board now serves primarily in an advisory capacity to the Director of the Department of Institutions.

Chapter III (page 11) addresses the six questions of the sunset law. The chapter notes that the absence of the board would not harm the public regulatory functions of the board could be assumed by existing entities or by an advisory council.

The chapter then suggests that if the board is reestablished, board function overlap with other entities should be removed and board involvement could be expanded to department functions not presently covered (page 15). In addition, certain facets of board operations such as periodic inspections of institutions and communication between the board and the department and other boards could be improved. If the board is continued, the quasi-judicial hearing process should be formalized (page 16).

The chapter also addresses the cost of the board and notes that it is minimal. The cost to the public if the director appointed an advisory council would probably be comparable to the present cost of the board (page 18).

The chapter concludes with a discussion of alternative methods to the present board. These alternatives would each provide the public with protection and include reestablishment, modification, or termination of the board.

## Chapter I

### INTRODUCTION

This sunset performance review addresses the need for the Board of Institutions--a state board within the Department of Institutions. The Board of Institutions has a duty to respond in an advisory capacity to the director of the Department of Institutions and also to act as a review and quasi-judicial board for hearing the grievances of departmental employees, inmates and patients of the various institutions within the department.

### REPORT OBJECTIVES

The 1977 Legislature passed a law terminating numerous regulatory boards and agencies, including the Board of Institutions. This law is commonly referred to as the "sunset law." The "sunset law" requires the Legislative Audit Committee to conduct a performance audit of each terminated agency. The performance audit must objectively review the need for each regulatory board/agency and offer recommendations for reestablishment, modification, or termination.

In defining legislative intent, the sunset law (Section 82-4601(1), R.C.M. 1947) states that, by requiring periodic evaluation in the form of a performance audit, the legislature will be in a better position to ensure that agencies and programs exist only to be responsive to state citizens' needs. The

sunset law terminates the Board of Institutions on July 1, 1979. This performance audit is in response to the statutory requirement for a review prior to board termination.

#### REPORT ORGANIZATION

The sunset law requires the thorough examination of the following questions during the conduct of the performance audit:

"(a) Would the absence of regulation significantly harm or endanger the public health, safety, or welfare?

(b) Is there a reasonable relationship between the exercise of the State's police power and the protection of the public health, safety, or welfare?

(c) Is there another less restrictive method of regulation available which could adequately protect the public?

(d) Does the regulation have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?

(e) Is the increase in cost more harmful to the public than the harm which could result from the absence of regulation?

(f) Are all facets of the regulatory process designed solely for the purpose of and have as their primary effect the protection of the public?" (Senate Bill 162, Chapter 562, Laws of Montana, 1977.)

The report focuses on these questions.

Chapter I is introductory. It summarizes the objectives, organization, and scope of the report. Chapter II presents background information about the board. Included in this background information is a history of the board, and details on the board's organization, staffing, funding, objectives, and operations. Chapter III addresses the six specific questions set forth in the sunset law.

## SCOPE OF THE AUDIT

This performance audit primarily addresses the need for the existence of the Board of Institutions. It focuses upon the six questions posed in the sunset law and includes an examination into the effectiveness of the operations of the board. It does not encompass a review of the financial transactions of the board or the board's overall compliance with state laws.



## Chapter II

### BACKGROUND

The Board of Institutions (hereinafter referred to as the board) and the Department of Institutions were created in 1963. At that time, the department was headed by the board which in turn selected a director to administer the department on a day-to-day basis. At its inception, the board and the department were charged with the jurisdiction and control of nine state institutions. They were: Galen State Hospital, Center for the Aged, Montana Children's Center, Mountain View School, Pine Hills School, Boulder River School and Hospital, Warm Springs State Hospital, Montana State Prison, and Montana Veteran's Home. Creation of the Swan River Youth Forest Camp and the Eastmont Training Center in 1967 brought the total number of board and department controlled institutions to eleven. The institutions within the department were each headed by a superintendent or warden. Generally, each was selected for an indefinite term by the board.

The five member board was composed of individuals selected for five year terms by the Governor, subject to Senate confirmation. From its membership, the board selected a chairman who served for one year. The board held approximately eight meetings annually.

The board, with its quasi-judicial authority, was created for the purpose of policy-making for the

management of the department and the institutions under its control. The primary activities of the board, before Executive Reorganization in 1971, included the approval of policy directives, selection of institutional heads, budgetary review, supervision of the department director, and various administrative matters. On a few occasions, the board also resolved disputes regarding inmate or personnel grievances.

#### PRESENT BOARD

The Executive Reorganization Act of 1971 established standard terminology for the organizational structure of executive branch agencies other than specified elected officials. The Department of Institutions was one of 19 departments or agencies created by the reorganization act.

Due to executive reorganization, the board no longer has the responsibility for administration of the department. The Governor now appoints a director who administers the department. The board is no longer responsible for the appointments of institutional superintendents or wardens. The present board therefore serves primarily in an advisory capacity to the director. In addition, the board exercises a quasi-judicial function regarding the resolution of personnel, patient, and inmate grievances.

Section 80-1407.1, R.C.M. 1947, outlines the powers, duties, and authority of the present board as



it was recreated pursuant to executive reorganization.

These are summarized below:

- To act in an advisory capacity to the department by furnishing advice, gathering information, and making recommendations.
- The board cannot administer a program or function or set policy.
- The board may hear grievances of patients or inmates of institutions within the department or employees of the department for possible resolution.
- Actions by the board cannot infringe upon the functions of the Board of Pardons.

#### BOARD ORGANIZATION AND FUNDING

Like the prior board, the board is composed of five members appointed by the Governor with the consent of the Senate. According to Section 82A-806, R.C.M. 1947, board members are selected so that no more than three members are from any political party and so that no more than three are from any one Congressional District. Although reorganization limited the present board to mainly an advisory function, the board retained the quasi-judicial designation. As such, one member is required to be an attorney licensed to practice law in Montana. The only other requirement of board members is that they be qualified by aptitude, experience, and interest.

In addition to the five board members, the board uses the services of an attorney who is paid on a fee for service basis. The attorney generally serves as a hearings officer and legal adviser to the board to

ensure that due process is afforded all those that bring appeals before the board. The rationale for having a separate board attorney when one of the board members is an attorney is to preclude any charge of conflict of interest when the board exercises its quasi-judicial authority regarding grievance hearings.

The board is funded through general fund appropriations. Illustration 2-1 summarizes the board's expenditures for fiscal years 1973-74 to 1977-78. In addition, the department reported expenditures for the services of an attorney to the board which are summarized in Illustration 2-2.

<b>Board Expenditures</b>	
<b>Fiscal Year</b>	<b>Expenditure</b>
1977 - 78	\$ 1,595
1976 - 77	3,697
1975 - 76	1,927
1974 - 75	4,005
1973 - 74	3,874

Source: Compiled by the Office of the Legislative Auditor from information supplied by the Department.

Illustration 2 1

<b>Expenditures - Board Attorney Services</b>	
<b>Calendar Year</b>	<b>Expenditure</b>
1978 (Jan-Aug)	\$ 425
1977	2,300
1976	4,982

Source: Compiled by the Office of the Legislative Auditor from information supplied by the Department.

Illustration 2-2

## BOARD GOALS AND OBJECTIVES

During the conduct of this audit, the department reported the following goals and objectives of the board.

### Goals of the Board

- To act as a review and quasi-judicial board for hearing the grievances of inmates, patients, and employees of the department.
- To provide feedback to the department reflecting public sentiment and concerns.
- To advise the department in policy matters pertaining to administration, corrections, mental health, and alcohol and drug abuse.
- To serve as a link of communication between the department and the public of Montana by providing an avenue for citizens and clients of the department to air complaints, problems, and questions regarding department operations.
- To advise the department, the Governor, and legislators to ensure maximum service to those in the care of Montana's institutions.

### Objectives of the Board

- To meet at least quarterly to discuss matters pertaining to department operations.
- To advise the department concerning matters related to department policy and specific relevant issues.
- To use the board's quarterly meetings as a forum to keep the public informed about departmental actions.
- To use board meetings to keep the department appraised of current community needs and concerns.
- To review inmates, patients, and employee grievances in a conscientious and expeditious manner.

To accomplish these goals and objectives, the board meets periodically. Illustration 2-3 lists the number of board meetings for calendar years 1972 through 1978.

<b>Number of Board Meetings Per Year 1972 - 1978</b>	
<b>Calendar Year</b>	<b>Number of Meetings</b>
1978 (Jan-Aug)	1
1977	4
1976	3
1975	3
1974	6
1973	3
1972	6

Source: Compiled by the Office of the Legislative Auditor.

**Illustration 2-3**

While attending board meetings or engaged in board duties, each member is entitled to be paid \$25 per day and is also entitled to be reimbursed for travel expenses. During the conduct of board meetings, the board primarily addresses advisory questions. In some instances, the board does exercise its quasi-judicial authority by holding hearings during board meetings to resolve grievances of department personnel and institutionalized patients and inmates. The board has held six hearings for this purpose in the last seven years. In addition to scheduled board meetings, the director

reported that telephone communication is maintained between the department and board members for advisory purposes.

#### SUMMARY

The board was originally created in 1963 to administer and control state institutions. Executive reorganization in 1971 removed much of the board's authority. The board now exists primarily in an advisory capacity to the director of the Department of Institutions. In certain cases the board does exercise its quasi-judicial authority by holding hearings to resolve employee, patient, or inmate grievances.



## Chapter III

### BOARD FUNCTIONS RELATED TO THE SUNSET QUESTIONS

This chapter addresses the six questions posed by the sunset law. The sunset questions are primarily concerned with "regulation" of Montana's trades, professions, industries, and occupations. In relation to these questions and their expressed intent, we have determined that the present board does not "regulate" nor does the board have regulatory authority. For this reason, the sunset questions are addressed from the viewpoint of the need for the board and its functions.

#### WOULD THE ABSENCE OF THE BOARD HARM THE PUBLIC?

The first sunset question is addressed by examining the need for the board. The present functions of the board can be divided into two areas: the advisory function and the quasi-judicial function. The need for each of these functions is discussed below.

#### Advisory Function

The board primarily operates in an advisory capacity to the director. The director reported that such advice has been useful and meaningful. The board provides the director only with recommendations. It does not set policy nor does it regulate institutions or department administration. If the director determines that the advisory function is necessary, then the director could appoint an advisory council of lay members. State law gives the director this authority

and further provides that such an advisory council may be operative for two years. The council could then be reappointed if necessary. The director also reported that the medical expertise of board members is relied upon in many instances. If medical expertise is necessary, the director could hire medical consultants as needed.

#### Quasi-Judicial Function

The board also exercises quasi-judicial authority on occasion. The quasi-judicial function is limited to the hearing of grievances of employees, patients, and inmates. The grievance resolution capacity of the board is used after all other administrative remedies within the department have been exhausted. Article 12, Section 3, of the Constitution of the state of Montana states: "Persons committed to any such institution shall retain all rights except those necessarily suspended as a condition of commitment." By constitutional mandate, the rights of patients and inmates must be protected until the state's responsibility is terminated. Through the hearing process, the present board aids in the protection of the constitutional rights of patients and inmates.

We earlier noted that the board exercised its quasi-judicial authority on six occasions during the last seven years. Illustration 3-1 summarizes these quasi-judicial hearings. For each of the six hearings,



the board addressed administrative problems that could have been addressed by the department and sometimes were addressed by the department.

<b>Quasi-Judicial Activity</b>				
<b>— Type of Grievance Hearing —</b>				
<b>Calendar Year</b>	<b>Personnel</b>	<b>Patient</b>	<b>Inmate</b>	<b>Total</b>
1978 (Jan-Aug)	0	0	0	0
1977	0	0	0	0
1976	1	2	0	3
1975	0	0	0	0
1974	2	0	1	3
1973	0	0	0	0
1972	0	0	0	0

Source: Compiled by the Office of the Legislative Auditor.

**Illustration 3-1**

In those cases, where the board resolved grievances the department had earlier attempted to resolve, the board agreed with the department's action.

We noted that the quasi-judicial hearing process for patients and inmates has no established hearing procedure. In one example of a patient's appeal hearing before the board, the hearing was reported to be "awkwardly handled" and no transcript was made of the proceedings. In addition, board minutes do not contain documentation of board discussions, conclusions, and recommendations regarding hearing resolution. The board acts with quasi-judicial authority, but the lack

of a permanent record makes the hearing process of questionable usefulness.

We analyzed each of the six instances where the board exercised its quasi-judicial authority and noted that the grievances fall into two categories: (1) employee grievances, and (2) inmate and patient grievances. Three of the six grievances involved employees. The Board of Personnel Appeals could have handled the grievance resolution as it does for other state employees. In fact, the Board of Personnel Appeals has resolved grievances of department employees (91 cases between fiscal years 1973-74 and 1977-78). These grievances involved collective bargaining, job classifications, and position upgrades. (Section 59-904, R.C.M. 1947, excludes teachers under the authority of the Department of Institutions from the Board of Personnel Appeals' jurisdiction. Teachers have their own system for collective bargaining and grievance resolution.) The remaining three grievances involved patients or inmates. Patients of institutions have available legal assistance from Montana Legal Services. Inmates may receive legal services through the University of Montana Law School Defender Project. These services provide "advocacy" programs and, although they do not represent an administrative review body like the board, they do attempt to resolve patient and inmate problems. In addition, the board's minutes show

instances where grievance resolution has been accomplished without board involvement due to the aggrieved parties preference to take the matter to court. For the above reasons, it is doubtful that the absence of the board's advisory function or the quasi-judicial function would significantly harm the public--the employee, patient, or inmate due to the alternatives available.

IS THERE A REASONABLE EXERCISE OF THE  
STATE'S POLICE POWER?

During the conduct of this audit, we determined that certain functions of the board overlap or could be handled by other entities. The quasi-judicial functions of the board fall into this category as discussed earlier. We also determined that the Board of Institutions and the Mental Disabilities Board of Visitors are both involved with the same institutions in some cases. The Mental Disabilities Board of Visitors, established by the Legislature in 1975, reviews patient care at Montana's institutions for the mentally ill and the developmentally disabled, and also at the community mental health centers. During fiscal 1978, the Board of Visitor's made 14 site visits to those institutions and mental health centers which serve the developmentally disabled. With each site visit, a report was published which identified the facility's deficiencies and accomplishments. The Board of Visitors consists of

five members appointed by the Governor and is supported by one full-time staff person. The budget for the Board of Visitors was \$39,359 for fiscal 1978 and is \$39,096 for fiscal year 1979. The Board of Visitors does not have quasi-judicial authority to resolve grievances and has been specifically asked not to make recommendations in reports.

Illustration 3-2 summarizes the areas of involvement by the Board of Institutions and the Board of Visitors. The illustration indicates that the activities of both boards result in similar involvement in some instances. In addition, the illustration indicates that there are some departmental functions with which neither board is involved. If it is reasonable to have an advisory board, it would seem logical to receive board input into all departmental functions. We were also informed that there is little if any communication between the two boards. If both boards are retained, then a system of communication between the boards should be established.

#### ARE ALL BOARD FACETS DESIGNED FOR PUBLIC PROTECTION?

The sunset law expresses the legislative concern that state agencies and programs should be responsive to the public need. Board members indicated that the board maintains grass-roots contact with the public. Board goals specifically state that the board serves as a link between the department and the department's clients (patients and inmates).

## Areas of Involvement Board of Institutions - Board of Visitors

Functions of the Department of Institutions	Board of Institutions Involvement	Board of Visitors Involvement
District Youth Guidance Homes		
Warm Springs State Hospital	■	■
Exam./Commit. of Mentally Deranged		■
Patient Transfers	Possible	■
Examination of Patients/Vol. Admis.		■
Convalescent leave of Patients		
Voluntary Sterilizations		
Juvenile Facilities	■	
Institutional Industries	■	
Payments for Care of Patients	■	
Galen State Hospital	■	■
Montana Veterans' Home	■	
State Prison	■	
Mountain View/Pine Hills School	■	
Boulder River School/Hospital	■	■
Mental Hygiene/Mental H. Ctrs.		■
Montana Ctr. for the Aged	■	■
Mental Retardation Programs		■
Probation/Parole/Clemency		
Alcohol/Drug Dependence		Limited
■ Indicates Involvement		

Source: Compiled by the Office of the Legislative Auditor  
Illustration 3-2

One board member indicated that periodic on-site inspections of institutions would better serve the public. Although the board has the authority to conduct on-site inspections, it does not periodically do so. In fact, one individual with three years of board membership has never visited an institution. It is difficult to imagine that the public is protected effectively if the board does not periodically visit or inspect institutions.

One board member also indicated that the infrequent board meetings make it difficult to keep up-to-date. Illustration 2-3 (see Chapter II) indicates that the board has met only once during the first eight months of 1978. The director reported that some communication with some of the board members is maintained through use of the telephone.

#### COST CONSIDERATIONS

Does board functioning have the effect of directly or indirectly increasing governmental costs; and, is the increase in cost more harmful to the public than the harm which would result from the absence of the board. The monetary cost of the board was displayed in Illustrations 2-1 and 2-2. These costs are minimal although Montana taxpayers ultimately must absorb them. Since the board does not have regulatory responsibility, there are no other costs associated with board activities. The director of the department stated that

the use of the board in its advisory capacity was useful. In the absence of board functioning, the director may require the advice of a lay board or advisory council. The cost of such a board or council would probably be comparable to the cost of the present board.

#### ALTERNATIVE METHODS

The final sunset question requires the analysis of possible alternatives to the present situation. The alternatives fall into three categories: board reestablishment, modification, and termination.

##### Board Reestablishment

Although the present board acts in a limited capacity, it is nevertheless acting in a capacity which the director has stated is needed. Without the advisory expertise of the board, the director might need to appoint an advisory council. Presently there is overlap in the board's overview of mental facilities with the Board of Visitors, but this is not the case with correctional facilities. In the absence of the board, there would not be an advisory review for correctional facilities or for the Veterans' Home. Although there are several entities that provide or could provide administrative review for grievances in the institutions, the board presently serves as an additional point of review before the grievance is taken to the courts. The board's position as an avenue for public input would also be eliminated upon board termination.

### Board Modification

The present board is statutorily limited. Although designated as a quasi-judicial board, it does not have full quasi-judicial authority which could include interpreting, applying, and enforcing existing rules and laws, ordering action or abatement of action, and adopting procedural rules. If statutorily given more authority and policymaking ability, the board's activity in institutional matters could be greatly increased above the present level. To statutorily remove the board's limited quasi-judicial authority would have the effect of reducing the board to a purely advisory level.

### Board Termination

As previously mentioned, board functions are similar to, or could be accomplished by, other existing boards and agencies. Although there is not an advisory review board for correctional facilities, this function could come under the responsibility of an existing entity. The quasi-judicial authority for grievance appeal has been used rarely in the past seven years and is of questionable effectiveness. Upon board termination, the director of the Department of Insititutions has the authority to form an advisory council.

### SUMMARY

This chapter has addressed the specific questions of the sunset law. First, the absence of the board



would not significantly harm the public. Statutory functions could be assumed by existing entities and by an appointed advisory council.

If the board is reestablished, board function overlap with other entities should be removed and board involvement could be expanded to departmental functions not presently covered. In addition, certain facets of board operations such as periodic inspections of institutions and communication between the board and the department and other boards could be improved. If the board is continued, the quasi-judicial hearing process should be formalized.

The chapter also addressed cost considerations. The cost of the board is minimal. The cost to the public if the director appointed an advisory council would probably be comparable to the present cost of the board.

The chapter concludes with a discussion of alternative methods to the present board. These alternatives would each provide the public with protection and include reestablishment, modification, or termination of the board.

